

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DOMINIQUE HESSERT,

Plaintiff,

- against -

DEERFIELD MEDIA (ROCHESTER), INC.

Defendant.

Docket No. 6:18-cv-6649

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Dominique Hessert (“Hessert” or “Plaintiff”) by and through her undersigned counsel, as and for her Complaint against Defendant Deerfield Media (Rochester), Inc. (“Deerfield” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted video of RIT student Chris Clemens who was nearly killed by two cars, owned and registered by Hessert, a New York based professional photographer and video journalist. Accordingly, Hessert seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Hessert is a professional photographer and video journalist in the business of licensing her photographs and videos to online and print media for a fee having a usual place of business at 153 Chauncey Street, Brooklyn, NY 11233.

6. Upon information and belief, Deerfield is a domestic business corporation duly organized and existing under the laws of the State of Delaware, with a place of business 4225 West Henrietta Road, Rochester, New York 14623. Upon information and belief, Deerfield is registered with the New York State Department of Corporations to do business in New York. At all times material, hereto, Deerfield has owned and operated a website at the URL: <http://video.13wham.com> (the “Website”) and has owned an operated a terrestrial TV station under the call letters WHAM-TV (the “TV Station”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Video

7. Hessert videoed RIT student Chris Clemens who was nearly killed by two cars in the hospital (the “Video”). A true and correct copy of the Video is attached hereto as Exhibit A.

8. Hessert is the author of the Video and has at all times been the sole owner of all right, title and interest in and to the Video, including the copyright thereto.

9. The Video was registered with the United States Copyright Office and was given registration number PA 2-119-478. See Exhibit B.

B. Defendant’s Infringing Activities

10. On or about March 8, 2018 Deerfield broadcasted the Video on their TV Station. On the same day, Deerfield wrote an article on the Website entitled *Hit by 2 cars and nearly*

killed, RIT student defies odds to make a new life. See URL <http://video.13wham.com/Hit-by-2-cars-and-nearly-killed-RIT-student-defies-odds-to-make-a-new-life-33628763>. The article prominently featured the Video. A true and correct copy of the broadcast and the article is attached hereto as Exhibit C.

11. Deerfield did not license the Video from Plaintiff for its article, nor did Deerfield have Plaintiff's permission or consent to publish the Video on its Website.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST DEFENDANT)
(17 U.S.C. §§ 106, 501)

12. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-11 above.

13. Deerfield infringed Plaintiff's copyright in the Video by reproducing and publicly displaying the Video on the Website. Deerfield is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Video.

14. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

15. Upon information and belief, the foregoing acts of infringement by Defendant have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

16. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Deerfield be adjudged to have infringed upon Plaintiff's copyrights in the Video in violation of 17 U.S.C §§ 106 and 501;
2. That Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Video;
3. The Plaintiff be awarded punitive damages for copyright infringement;
4. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
5. That Plaintiff be awarded pre-judgment interest; and
6. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
September 12, 2018

LIEBOWITZ LAW FIRM, PLLC

By: /s/Richard Liebowitz
Richard Liebowitz
11 Sunrise Plaza, Suite 305
Valley Stream, New York 11580
Tel: (516) 233-1660
RL@LiebowitzLawFirm.com

Attorneys for Plaintiff Dominique Hessert